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RECEIVED

MAR 23 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 23, 2000

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, SW Room TWB-204
Washington, DC 20554

Re: Ex parte - CC Docket No. 96-98; CCBPol 97-4
Petition of MCI for Declaratory Ruling That New Entrants
Need Not Obtain Separate License or Right-to-Use
Agreements Before Purchasing Unbundled Network Elements

Dear Ms. Salas:

Today, the enclosed letter was sent to Mr. Lawrence Strickling, with copies to Mr. Robert Atkinson and Ms. Michelle Carey, of the Common Carrier Bureau. This letter provides the Commission with a copy of AT&T's status report on the above-referenced proceeding, which was filed in the United States District Court for the Western District of Texas, Austin Division, on March 17, 2000. Please place a copy of this correspondence in the record of this proceeding.

Two copies of this Notice are being submitted to the Secretary of the Commission in accordance with Section 1.1206(b)(1) of the Commission's Rules.

Very truly yours,

Albert M. Lewis

No. of Copies rec'd 0+1
List A B C D E

Enclosure

cc: Mr. Lawrence Strickling
Mr. Robert Atkinson
Ms. Michelle Carey
Mr. Christopher Wright
Ms. Dorothy Attwood

Mr. Kyle Dixon
Ms. Rebecca Beynon
Mr. Jordan Goldstein
Ms. Sarah Whitesell



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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 23, 2000

Mr. Lawrence Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW Room 5-C450
Washington, DC 20554

Re: Ex parte - CC Docket No. 96-98; CCBPol 97-4
Petition of MCI for Declaratory Ruling That New Entrants
Need Not Obtain Separate License or Right-to-Use
Agreements Before Purchasing Unbundled Network Elements

Dear Mr. Strickling:

Enclosed is a copy of AT&T's status report on the above-referenced proceeding, as filed in the United States District Court for the Western District of Texas, Austin Division. AT&T's report was filed on Friday, March 17, 2000. Please let me know if you have any questions or need any additional information.

Very truly yours,

Albert M. Lewis

Enclosure

cc: Mr. Robert Atkinson
Ms. Michelle Carey

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**SOUTHWESTERN BELL
TELEPHONE COMPANY**

v.

**AT&T COMMUNICATIONS OF THE
OF THE SOUTHWEST, INC., et al**

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No. A-98-CA-736-SS

FILED
MAR 17 2000
U.S. DISTRICT COURT
BY CLERK'S OFFICE
DEPUTY

**AT&T'S REPORT ON THE STATUS OF PROCEEDINGS
PENDING BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,
AND RELATED REQUEST OF AT&T TO DISMISS ITS COUNT TWO**

Pursuant to the Court's March 6, 2000 Order, AT&T Communications of the Southwest, Inc. ("AT&T") hereby reports on, and requests dismissal of one of its counts in light of, the status of proceedings pending before the Federal Communications Commission ("FCC"), as follows:

I. Background

AT&T's First Amended Complaint for Declaratory and Other Relief Pursuant to the Telecommunications Act of 1996, filed February 3, 1997 in Cause No. A-97-CA-029-SS and consolidated into Cause No. A-97-CA-029-SS, contained two counts. Count One, styled "Requirement of Third Party Vendor Approval," concerned whether the obligation of Southwestern Bell Telephone Company ("SWBT") under Section 251(c)(3) of the federal Telecommunications Act of 1996 ("FTA") to provide AT&T and other competing telecommunications carriers with nondiscriminatory access to SWBT's unbundled network elements requires SWBT, rather than AT&T, to obtain any necessary licenses or right-to-use agreements from SWBT's third-party vendors of intellectual property. Count Two, styled "Failure to Require Route Indexing as an Interim Number Portability Method," concerned whether SWBT is required under Section 251(b)(2) of the FTA to

provide AT&T and other competing telecommunications carriers with the method of number portability known as "route indexing."

On March 13, 1997, AT&T filed its Motion for Stay and Referral to the FCC. On August 17, 1998, the Court, *inter alia*, granted AT&T's motion, and stayed AT&T's claims for affirmative relief pending the FCC's exercise of primary jurisdiction. (It also denied as moot, without prejudice to refile following FCC action, AT&T's Contingent Motion for Summary Judgment of May 16, 1997.) On November 6, 1998, the Court, among other things, severed all of AT&T's affirmative claims for relief from consolidated Cause No. A-97-CA-029-SS, ordered a new cause number be assigned, and also ordered that the severed action be automatically stayed pending FCC action.

II. Report on Intellectual Property Issue

The proceeding addressing whether incumbent LECs may procure or accept from equipment vendors restrictions on intellectual property embedded in the incumbents' unbundled network elements that require or authorize discrimination against CLECs remains pending before the FCC. See *Petition of MCI for Declaratory Ruling*, Docket CCBPol 97-4 & CC Docket No. 96-08 (Mar. 11, 19997). Although that proceeding is fully-briefed and ripe for decision, the FCC has not yet acted.

In the interim, while the Public Utility Commission ("PUC") in Texas has approved subsequent agreements containing provisions similar to those challenged by AT&T, AT&T has brought to the FCC's attention a recent decision of the Fourth Circuit which confirms that the Texas PUC violated the FTA by failing to require SWBT to obtain any necessary intellectual property licenses or right-to-use agreements from SWBT's third-party vendors. In *AT&T Communications*

of *Virginia, Inc. v. Bell Atlantic - Virginia, Inc.*, 197 F.3d 633 (4th Cir. 1999), the court of appeals concluded that a state commission wrongfully refused to require the incumbent LEC to negotiate licenses for intellectual property used in the incumbent's network. *Id.* at 670-71. The court held that an interconnection agreement without such a licensing provision -- like the AT&T-SWBT Texas Interconnection Agreement approved by the PUC -- "discriminates because it does not provide [competing carriers] equal license to the intellectual property embedded in [the incumbent's] network." *Id.* at 670. Such a result violates the FTA's requirement of nondiscrimination in access to unbundled network elements, *id.* (citing 47 U.S.C. § 251(c)(3) & 47 C.F.R. 51.311(b)), and is "inconsistent with the Act's purpose of fostering competition by removing barriers to entry in the local telephone market," *id.* at 671.

III. Report on Route Indexing Issue

AT&T no longer seeks relief regarding whether route indexing is a required method for *interim* number portability, the issue raised in Count Two of AT&T's Complaint. SWBT is now required under the FCC's rules to implement specified *permanent* number portability solutions, which eliminates the need for an interim solution. AT&T also notes that in its *Second Memorandum Opinion and Order on Reconsideration, In re Telephone Number Portability*, CC Docket No. 95116, FCC 98-275, 13 FCC Rcd 21204 (rel. Oct. 20, 1998), the FCC held that route indexing is a comparable and technically feasible method of providing interim number portability and that incumbent LECs are required to provide route indexing upon request. *See id.* paras. 18, 20.

As a result, AT&T no longer seeks relief from this Court on that issue. Accordingly, AT&T requests that the Court dismiss AT&T's Count Two on the route indexing issue.


VI. Conclusion

For the reasons stated above, AT&T requests that the Court dismiss Count Two of AT&T's First Amended Complaint for Declaratory and Other Relief Pursuant to the Telecommunications Act of 1996, regarding the route indexing issue.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE
SOUTHWEST, INC.
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By: 
Thomas K. Anson (SBN 01268200)

ATTORNEYS FOR AT&T COMMUNICATIONS
OF THE SOUTHWEST, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent this 17th day of March, 2000, to:

**ATTORNEYS FOR SOUTHWESTERN BELL
TELEPHONE COMPANY**

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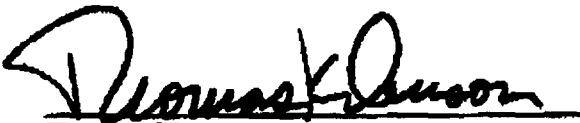
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Thomas K. Anson

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SOUTHWESTERN BELL
TELEPHONE COMPANY

v.

AT&T COMMUNICATIONS OF THE
OF THE SOUTHWEST, INC., et al.

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No. A-98-CA-736-SS

ORDER

CAME ON TO BE HEARD AT&T's report of the status of proceedings pending before the Federal Communications Commission ("FCC") and the request therein by AT&T Communication's of the Southwest, Inc. ("AT&T") that Count Two of AT&T's First Amended Complaint for Declaratory and Other Relief Pursuant to the Telecommunications Act of 1996 be dismissed. The Court, having considered the same, and any responses of other parties, is of the opinion that the request is meritorious and should be GRANTED.

ACCORDINGLY, IT IS ORDERED that Count Two of said Complaint is hereby DISMISSED.

SIGNED AND ENTERED this ____ day of _____, 2000.

SAM SPARKS
UNITED STATES DISTRICT JUDGE